

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS  
LIABILITY LITIGATION

MDL No. 2419  
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**JOINTLY PROPOSED AGENDA  
FOR THE MAY 13, 2014 STATUS CONFERENCE**

The Plaintiffs' Steering Committee, UniFirst Corporation, Ameridose LLC, New England Compounding Pharmacy, Inc. (through both the Trustee and counsel), and the Official Committee of Unsecured Creditors (through counsel) jointly propose the following agenda for the May 13, 2014 status conference:<sup>1</sup>

**A. Report to the Court.**

1. Status of settlement with NECC, insiders, related entities, and insurers
  - a. Report on fully executed settlement
  - b. Trustee's Motions for Bankruptcy Court Approval of Settlements [Dkt. 1106]
  - c. Where does the MDL go from here?
2. Status of mediation efforts [Mediation Order, Dkt. No. 394]
  - a. ARL
  - b. Liberty
  - c. Victory
  - d. Inspira
  - e. Florida clinics
3. Status of insurance declaratory actions:
  - a. *Ironshore Specialty Ins. Co. v. Ameridose et al.*, 1:13-cv-13000-FDS
  - b. *Certain Underwriters at Lloyd's, London v. Ameridose et al.*, 1:13-cv-12609-FDS
  - c. *Landmark Am. Ins. Co. v. ARL Bio Pharma, Inc.*, CJ-2013-3193 (Okla. Dist. Ct.)

<sup>1</sup> All defendants whose counsel have filed notices of appearance in the MDL were provided an opportunity to comment on the proposed agenda.

- d. *Star Ins. Co. v. Michigan Pain Specialists PLLC, et al.*, 14-243 CB Brown (Ann Arbor)
- 4. Status of discovery
  - a. Documents NECC produced to PSC informally are now available in the document repository
  - b. Tennessee discovery issues
  - c. Scheduling argument on fully briefed motions to dismiss
- 5. Status of litigation track
- 6. Status of bankruptcy proceedings
- 7. Status of appeals
- 8. Schedule for future status conferences

**B. Fully-briefed motions.**

- 9. Motion to Withdraw as Counsel for Norma King [*King v. New England Compounding Pharmacy*, 14-cv-10434, Dkt. No. 14]
  - a. Motion for Leave to Appear via Telephone [Dkt. 1101]
  - b. Opposition by Attorney Barbara Buell [14-cv-10434, Dkt. No. 15]
- 10. PSC's Motion for Entry of CMO Establishing Assessment Procedures to Fund Common Benefit Account [Dkt. 790]
  - a. Certain Members of the Official Committee of Unsecured Creditors Response [Dkt. 830]
  - b. Official Committee of Unsecured Creditors Limited Objections [Dkt. 833]
  - c. Trustee's Limited Objections [Dkt. 834]
  - d. Plaintiffs Dale and Allison Devilli Opposition [Dkt. 836]
  - e. Interested Plaintiffs' Counsel Response [Dkt. 839]
  - f. Official Committee of Unsecured Creditors and Trustee Sur-Reply [Dkt. 914]
  - g. Certain Members of the Official Committee of Unsecured Creditors Sur-Reply [Dkt. 915]
  - h. PSC Sur-Sur-Reply [Dkt. 1008]
  - i. Trustee and Official Committee of Unsecured Creditors Reply to PSC Sur-Sur-Reply [Dkt. 1030]

- j. Trustee and Official Committee of Unsecured Creditors Reply to PSC Sur-Reply [Dkt. 1095] (Leave to file granted 4/10/14)
- 11. Motion to Stay Discovery by Saint Thomas Health, Saint Thomas Network, Saint Thomas West Hospital [Dkt. 595, 596]
  - a. Motion for Joinder in Saint Thomas's Motion for Protective Order and Saint Thomas's Motion to Stay Discovery, and Motion for entry of discovery plan [Dkt. 598] (joinder granted)
  - b. PSC's Response to Motion re Motion for Joinder in Saint Thomas's Response to Motion for Reconsideration Motion for Case Management Orders, Motion for Protective Order (Second Amended), Motion to Stay Discovery [Dkt. 617]
  - c. Saint Thomas Entities' Notice of Status of Meet and Confer [Dkt. 863]
- 12. Ameridose Motion to Destroy Recalled Products [Dkt. 1090]
  - a. Unifirst Motion to Extend Time to Respond [Dkt. 1098]
  - b. Tennessee Clinic Defendants Motion to Extend Time to Respond [Dkt. 1099]
  - c. PSC Response [Forthcoming]
- 13. Premier Orthopedic and Sports Medicine Associates of Southern New Jersey, Motion to Dismiss (Global Claims) [Dkt. 831]
  - a. PSC Response [Dkt. 980]
  - b. Premier Reply [Dkt. 1031]
  - c. PSC Sur Reply [Dkt. 1097] (Leave to file Granted 4/10/14)
- 14. Motions for extension of time / briefing schedules
  - a. Amended Unifirst and PSC Joint Motion for Order to Set Briefing Schedule [Dkt. 1102]
  - b. Joint PSC and Cincinnati Pain Motion for Revised Motion to Dismiss Schedule [Dkt. 1055]
  - c. BKC Motion for Revised Motion to Dismiss Briefing Schedule [Dkt. 1026]
  - d. APAC and PSC Amended motion for order to Set Briefing Schedule [Dkt. 1088]
- 15. PSC's Motion to Partially Lift Discovery Stay against Affiliated Defendants [Dkt. 534]
  - a. Argued at the April 10, 2014 status conference
  - a. Fully briefed except no decision on Ameridose's Motion to Reply to Tennessee Clinic Defendants' Joinder in the PSC's Discovery Lift [Dkt. 1046]

16. Motion for Entry of Bellwether Trial and Pre-Trial Scheduling Order (St. Thomas Trial Plan) filed by PSC [Dkt. 837, 838]
  - a. Argued at the April 10, 2014 status conference
17. Trustee's Renewed and Supplemental Motion to Transfer [Dkt. 732]
  - b. Argued at March 13, 2014 status conference

**C. Briefing in progress.**

18. Master Complaint against Affiliated Defendants and responsive pleadings
  - a. April 30, 2014, deadline to file Master Complaint against Affiliated Defendants [Dkt. 881(5)]
  - b. Moot if settlement approved.
19. Saint Thomas Entities' Motion To Amend Motion To Dismiss For Failure To State A Claim [1074]
20. Saint Thomas Entities' Motion to Modify Case Management Order No. 6 [Dkt. 1075, 1076]
21. Dispositive Motions:
  - a. Tennessee Clinic Defendants' Motion for Summary Judgment [Dkt. 774, 775, 776, 777, 778]
    - i. PSC Rule 56 (d) Response to Tennessee Clinic Defendants' Motion for Summary Judgment [Dkt. 948]
    - ii. Tennessee Clinic Defendants' Reply to Motion for Summary Judgment [Dkt. 1015]
    - iii. PSC's Motion for Leave to File Surreply to Tennessee Clinic Defendants' Reply to the PSC's Rule 56(d) Response to the Tennessee Clinic Defendants' Motion for Summary Judgment re Compliance with Tenn. Code Ann. § 29-26-122 [Dkt. 1061]
  - b. Tennessee Clinic Defendants' Response [Dkt. 1070]
  - c. Cincinnati Pain Management Consultants Motion to Dismiss [Dkt. 1013, 1014]
  - d. Tennessee Clinic Defendants' Motion to Dismiss (Failure to Comply with Tenn. Code. Ann. 29-26-121) [Dkt. 770, 898, 899, 924, 925] and St. Thomas Entities' and Ascension Parties' Motion to Dismiss (Failure to Comply with Tenn. Health Care Liability Act) [Dkt. 779, 780]

- i. PSC's Motion for Extension of Time to File Response/Reply [Dkt. 1028]
- e. Tennessee Clinic Defendants' Motion to Dismiss (Global Claims) [Dkt. 771, 772] and St. Thomas Entities' Motion to Dismiss (Global Claims) [Dkt. 893, 894] and Ascension Parties' Motion to Dismiss (Global Claims) [Dkt. 895, 896]
  - i. PSC Opposition [Dkt. 1040, 1042, 1043]]
  - ii. PSC Assented to Motion Requesting Extension of Deadline on Responses to 5/9/2014 [Dkt. 1100]
  - iii. St. Thomas Reply to Response [Dkt. 1110]
  - iv. Ascension Reply to Response [Dkt. 1111]
  - v. TN Clinic Defendants Reply to Response [Dkt. 1112]
- f. Ascension Health Motion to Dismiss for Failure to State a Claim filed [Dkt. 779]
  - i. PSC Opposition [Dkt. 1043]
  - ii. Ascension Motion to Amend Motion to Dismiss for Failure to State a Claim [Dkt. 1074]
- g. BKC Motion to Dismiss [Dkt. 896, 897]
  - i. PSC Opposition [Dkt. 1062]
- h. UniFirst Motion to Dismiss [Dkt. 1050, 1051, 1052]
- i. Dr. Nitesh Bhagat's Motion to Dismiss for Failure to Serve a Proper Affidavit of Merit [Dkt. 1039]
  - i. PSC Opposition [Dkt. 1091]
- j. APAC Motion to Dismiss for Failure to State a Claim [Dkt. 1108, 1109]

Dated: May 12, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Kristen A. Johnson, hereby certify that I caused a copy of the above Jointly Proposed Agenda for the May 13, 2014 Status Conference to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: May 12, 2014

*/s/ Kristen A. Johnson*  
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